IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 35 OF 2007

Sou. Asha Valmik Suryavanshi ..Petitioner

Vs.

Suresh Narayan Barse
Since deceased (through his LR.)
Sanjay Suresh Barse ..Respondent

Mr. Uday P. Warunjikar for petitioner.
Mr. Y.S. Shinde, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 24, 2007.

P.C.:

1. Heard Mr. Warunjikar the learned counsel for the petitioner who is an accused in Criminal Case No. 2052 of 2004 filed for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The said complaint was filed on or about 27/4/2004 and the complainant died on 13/8/2005. The petitioner, therefore, moved an application in the said complaint claiming it to be an application under Section 256(2) read with Section 249 of Cr.P.C. and prayed for dismissal of the complaint on two main grounds,

namely, (a) that the complainant had filed Criminal Case No.2052/04 as a counter blast to the Criminal Case which was registered against him and charge-sheet was filed in the same on the basis of the complaint she had filed with the concerned police station for an offence under Section 376 of IPC and this complaint came to be dismissed as abated on the demise of the complainant and Criminal Case No. 2052/04 was filed on the ground that the complainant had given hand loan to purchase the plot and it cannot be proved by the complainant's LRs.

2. On the demise of the complainant his LRs also had filed an application through his son Sanjay Suresh Barse for being brought on record as the claimant in Criminal Case No. 2052 of 2004. Said application at Exh.16 came to be allowed and consequently the application filed by the petitioner came to be rejected by the impugned order dated 6/11/2006.

3. Criminal Case No. 2052/04 is filed for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and it furnishes the material

particulars regarding the procedural requirements and these particulars can be proved from the record. Even though it is a criminal complaint, the payee's interest can be protected by granting compensation to be paid by the drawer and, therefore, on the demise of the complainant the case is not stand abated after the complainant's LRs have come on record. In a way, it is a money claim and, therefore, the LRs have been rightly brought on record.

4. Whether the case i.e. Cri. Case No. 2052/04 was filed as a counter blast or in retaliation of the petitioner filing an FIR which ultimately culminated in criminal case for the offence punishable under Section 376 of IPC and whether the issue of hand loan could be proved in the trial of Criminal Case No. 2052/04 are the issues which will have to be gone into on the basis of the evidence, both oral as well as documentary that the parties may adduce before the trial court. The charge has already been framed and if the main issue of debt or legal liability for the discharge of which the cheque dated 1/3/2004 for an amount of Rs.1,05,000/- was issued in favour of the

complainant by the present petitioner is a matter which requires to be decided on the basis of the evidence that may be adduced before the trial court.

5. Hence, there is no case made out to cause interference in the impugned order rejecting the application filed by the petitioner under Section 256(2) of Cr.P.C. and consequently the petition is rejected summarily.

(B.H. Marlapalle,J.)